

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 10, 2003

Agenda ID #2713
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 00-01-012

This is the draft decision of Administrative Law Judge (ALJ) Duda. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin,
Chief Administrative Law Judge

ANG:hfl

Attachment

Decision **DRAFT DECISION OF ALJ DUDA** (Mailed 9/10/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of Covad Communications
Company's Petition for Arbitration of
Interconnection Agreement with Roseville
Telephone Company.

Application 00-01-012
(Filed January 7, 2000)

OPINION CLOSING PROCEEDING**I. Summary**

This decision closes this proceeding and directs Roseville Telephone Company (Roseville) to file any cost study with proposed wholesale or "unbundled network element" (UNE) prices through a new application. Until further Commission action, Roseville shall continue to charge the interim UNE rates adopted in Decision (D.) 01-02-042, subject to true-up.

II. Background

In January 2000, Covad Communications Company (Covad), a competitive local carrier and digital subscriber line (DSL) provider, filed a petition for arbitration of an interconnection agreement between Covad and Roseville. At issue was the determination of Roseville's forward-looking costs in order to calculate wholesale prices for UNEs that Covad purchased from Roseville.

In D.00-06-080, the Commission resolved the arbitration by accepting Roseville's proposed UNE prices. Covad applied for rehearing of that decision, contending that the UNE prices approved by the Commission did not comply with the requirements of the Telecommunications Act of 1996, nor with regulations of the Federal Communications Commission. In its decision

resolving Covad's rehearing request, the Commission found that Covad had established legal error in D.00-06-080. (*See* D.01-02-042.) The Commission granted rehearing to set UNE prices for Roseville and on an interim basis set temporary UNE prices based on a proxy and subject to true-up. In compliance with D.01-02-042, Roseville currently charges for its UNEs based on Pacific Bell Telephone Company's (SBC Pacific's) UNE rates.¹

In March 2001, the Commission held a prehearing conference to set a schedule for proceedings to consider final UNE prices for Roseville. On May 25, 2001, Roseville filed a proposed cost study methodology and schedule for the proceeding, as directed by the Administrative Law Judge (ALJ). Roseville estimated it could complete a total element long run incremental cost (TELRIC) study of its forward-looking UNE costs six months following approval of its cost methodology. Shortly thereafter, Covad announced it would not comment on Roseville's proposed methodology because it was withdrawing from the proceeding. (*See* Covad's letter to the ALJ, dated 6/11/01.)

III. Closure of Proceeding

When the Commission granted rehearing of this case in February 2001, it had every expectation that it could examine a TELRIC-compliant cost study for Roseville in that year. Shortly thereafter, the Commission agreed with several parties that SBC Pacific's UNE rates required reexamination, and a resource-intensive review of SBC Pacific's UNE rates was initiated. (*See* Application 01-02-024 and consolidated cases, or "SBC Pacific UNE

¹ Roseville's UNE loop price is based on SBC Pacific's Zone 2 local loop price. (*See* D.01-02-042, Ordering Paragraph 2.) Roseville's other UNE prices are based on SBC Pacific's UNE prices as set in D.99-11-050. (*Id.*, Ordering Paragraph 3.)

Reexamination;” *See also Assigned Commissioner and Administrative Law Judge Ruling Denying Motion to Abey Cost Reexamination and Setting Scope for Unbundled Network Element Cost Reexamination Proceeding*, Application 01-02-024, June 14, 2001.) Covad’s withdrawal in June 2001 further complicated matters in that the one party initiating the case was no longer litigating it.

For various reasons, the SBC Pacific case has now been open over two years and is not yet concluded.² The SBC Pacific case was submitted on August 22, 2003, and we anticipate a proposed decision will be issued in the last quarter of this year. We prefer to conclude the SBC Pacific UNE Reexamination before we examine a cost study for Roseville. This will provide the Commission the option of using the expertise it has gained in the SBC Pacific case in evaluating UNE costs and prices for Roseville.

Given that Covad, the initial applicant, has withdrawn from and is not actively litigating this case, we find it makes sense at this juncture to close this proceeding and direct Roseville to file its TELRIC cost study with proposed UNE prices through a new application. Roseville should file any new application for revised UNE prices no sooner than six months following a decision in the SBC Pacific UNE Reexamination. When filing any new UNE application, Roseville may use either the method contained in its May 25, 2001 proposal or revise that method based on the outcome of the SBC Pacific UNE Reexamination. Roseville should continue to charge the interim rates established in D.01-02-042, subject to true up, until further action by the Commission.

² See D.02-05-042 which set interim UNE rates for SBC Pacific and which details some of the obstacles in the case up to that point.

In an ALJ ruling in June 2003, parties commented on this plan for closure of the proceeding. Roseville supported the closure and the opportunity to file a new application, but it asks that it be allowed to file a new application even before conclusion of the SBC Pacific UNE Reexamination. Roseville is concerned that potential delays in the SBC Pacific case may delay Roseville's ability to file its own UNE application. Covad agrees with the idea of closing this proceeding, but it asks the Commission to modify the interim rates adopted for Roseville in D.01-02-042. Specifically, Covad asks the Commission to recognize and integrate the changes it has made over the last few years to SBC Pacific's UNE rates, and thereby lower Roseville's interim rates accordingly. Roseville opposes Covad's suggestion, arguing that Roseville's rates must be based on the company's own costs and not SBC Pacific's. Roseville contends that due process requires further comments on Covad's suggestion to further lower Roseville's interim UNE rates.

Roseville does not persuade us to drop the requirement that Roseville wait until six months after a decision in the SBC UNE case before filing a new UNE application. There is no point in Roseville filing an application that we are not inclined to handle until after the SBC Pacific UNE case is resolved. We also disagree with Covad's suggestion to further modify the interim rates set in D.01-02-042. Covad's suggestion would require further rounds of comment and the Commission's resources are better spent completing the SBC Pacific UNE case, rather than further refining interim rates for Roseville.

IV. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by _____ and reply comments were filed by _____.

V. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Dorothy Duda is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.01-02-042, the Commission granted rehearing to set new UNE prices for Roseville.
2. Covad withdrew from this case on June 11, 2001.

Conclusions of Law

1. This proceeding should be closed and Roseville should file a new application containing a TELRIC-compliant cost study for its UNE costs no sooner than six months following a decision establishing permanent UNE prices in the SBC Pacific UNE Reexamination.
2. Roseville should continue to charge the interim UNE rates established in D.01-02-042, subject to true-up, until further action by the Commission.

O R D E R

IT IS ORDERED that:

1. Roseville Telephone Company (Roseville) shall file a cost study for its unbundled network elements (UNEs) that complies with the Federal Communications Commission's Total Element Long Run Incremental Cost principles no sooner than six months following a decision establishing permanent UNE prices in Application 01-02-024 and consolidated cases (the "SBC Pacific UNE Reexamination").
2. Roseville shall continue to charge the interim UNE rates established in Decision 01-02-042, subject to true-up, until further action by the Commission.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.